

TITLE 14. NATURAL RESOURCES  
DIVISION 2. DEPARTMENT OF CONSERVATION  
CHAPTER 5. DIVISION OF RECYCLING

Legend:

<u><i>Italic Underline:</i></u>	Proposed Emergency Additions
<del><i>Italic Strikeout:</i></del>	Proposed Emergency Deletions

SUBCHAPTER 2. GENERAL REQUIREMENTS

Article 5. Administrative Actions

§ 2135. UNFAIR AND PREDATORY PRICING

(a) Complaints submitted pursuant to Section 14588.2 of the Act shall be filed on the Predatory Pricing Complaint Form, DOR 51 (10/99) and shall contain all of the following information:

(1) The complainant's name, address, telephone number, facility or business name and certification or identification number. The complainant shall meet the requirements of Section 2000(a)(34) of these regulations.

(2) The name and address and, if known, the telephone number, certification number, and the owner/representative of the supermarket site recycling center alleged to have engaged in unfair and predatory pricing (hereinafter respondent).

(3) A summary of the facts and allegations which form the basis of the complaint, including, but not limited to, all of the following:

(A) The date on which the payment alleged to have constituted unfair and predatory pricing was offered or paid to a consumer by the supermarket site.

(B) The amount of the payment offered or paid and the type of beverage container material for which the payment was offered or paid.

(C) If the complaint is based on an advertisement in a newspaper, a copy of the newspaper section containing the advertisement and, if possible, the date on which the advertisement was purchased.

(4) A statement declaring the truth of the information and allegations contained in the complaint and the complainant's dated signature, signed under penalty of perjury.

(b) A complaint shall be submitted within 60 days of the alleged occurrence that forms the basis of the complaint.

(c) A complaint will not be deemed "received" by the Division, within the meaning of Section 14588.2 of the Act, unless it is submitted on the form prescribed by the Division and until it is determined by the Division to be complete.

(1) To be complete, a complaint shall contain all of the information

required in subsection (a) above.

(2) In addition to paragraph (c)(1), a complaint based on an advertisement in a newspaper shall not be considered complete until the Division has ascertained the date on which the advertisement was purchased.

(3) Upon notification by the Division that a complaint is incomplete pursuant to paragraph (c)(1) above, the complainant shall have 30 days in which to provide the information needed to complete the complaint. Any complaint that remains incomplete for more than 30 days after the notification of the complainant shall be rejected by the Division and may not be resubmitted by the complainant.

(d) The subject of a complaint submitted pursuant to Section 14588.1 of the Act must be a supermarket site that receives handling fees.

(1) A supermarket site is a "supermarket site that receives handling fees," as that term is used in Section 14588.1, if the Division determines that a handling fee payment was disbursed to the supermarket site within sixty days before the date on which the alleged unfair and predatory pricing was offered or paid.

(2) A complaint will be considered deficient on its face and rejected without further investigation, if the Division determines that the condition described in paragraph(d)(1) has not been satisfied.

(e) Upon the Division's receipt of a completed complaint regarding a supermarket site that receives handling fees, the Division shall conduct the audit required in Section 14588.2 of the Act.

(1) In order to complete the audit required in (e) above, the Division shall survey, using Predatory Pricing Survey DOR 54 (11/99), the certified recycling centers within a 10-mile radius of the respondent specified in the complaint to determine the highest scrap value paid or offered by these certified recycling centers for the specific material type identified in the complaint on the date specified in the complaint. The completed survey may be submitted to the Division via mail or facsimile, or obtained by Division staff through a field visit to the recycling center.

(A) No later than five days after being notified of the Division's survey, each recycling center shall provide the Division with a declaration, signed under penalty of perjury on the Predatory Pricing Survey DOR 54 (11/99), provided by the Division, which identifies the name of the recycling center, certification number, address, telephone number, the highest scrap value paid or offered and the total amount paid or offered per pound by that recycling center for the relevant material type on the date specified in the complaint.

(B) A recycling center's failure to provide timely or accurate information pursuant to paragraph (e)(1)(A) above is grounds for discipline pursuant to Sections 14591.1 and 14591.2 of the Act.

(2) The Division may conduct field visits and inspect recycler records to verify the scrap value paid or offered by certified recycling centers.

(3) The Division shall use the data compiled pursuant to paragraph (e)(1)(A) to calculate the average highest scrap value paid or offered by recycling centers within a ten-mile radius of the respondent.

(4) For purposes of this section, "scrap value paid or offered" is the per-pound total price paid or offered by a certified recycling center for an individual material type, minus the California Refund Value.

(f) Upon completing the audit required in Section 14588.2 of the Act, the Director, or the Director's designee, shall determine whether there is probable cause to believe that the respondent has engaged in unfair and predatory pricing.

(1) If the Director/designee determines that such probable cause exists, the Department shall convene an informal hearing pursuant to subsection (b) of Section 14588.2. The informal hearing shall be conducted pursuant to Chapter 4.5 (commencing with Section 11445.10) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the Director/designee determines that probable cause does not exist, the Division shall notify both the complainant and the respondent of this finding. The Division shall also resume payment of handling fees to the respondent, including payment of handling fees withheld pending resolution of the pending complaint, if the respondent is otherwise eligible to receive those handling fees.

(g) A complaint shall be deemed frivolous and rejected without investigation if, during the previous twelve-month period, the complainant filed two other complaints against the same supermarket site, both of which resulted in determinations in favor of the respondent, either pursuant to paragraph (2) of subsection (f) or pursuant to a hearing.

Authority: 14530.5(b) and 14536, Public Resources Code. Reference: Sections 14588, 14588.1 and 14588.2, Public Resources Code

#### ~~§2140. UNFAIR AND PREDATORY PRICING DETERMINATION HEARING.~~

~~(a) Complaints filed with the Department, pursuant to Section 14585(f) of the Act, shall contain all of the following information:~~

~~(1) The name, address, telephone number and representative of the complainant;~~

~~(2) The name, address, and, if known, the telephone number and representative of the supermarket site recycling center alleged to have engaged in unfair and predatory pricing, (hereafter respondent);~~

~~(3) A summary of the facts and allegations which form the basis of the complaint. The complainant may, but need not, provide documentary evidence with the complaint; and~~

~~(4) A proof of service verifying delivery of a copy of the complaint by the complainant upon the respondent, or, if a corporation, its agent for service of process.~~

~~(A) Service may be effected in any manner authorized by Government Code Section 11505(c).~~

~~(b) The Department shall schedule the hearing within 30 working days of receipt of the complaint and shall notify the parties of the time and place of the hearing no later than 20 days before the hearing.~~

~~(c) The hearing shall be limited in scope to the time period, container type(s) and the supermarket site recycling center specified in the complaint filed with the Department by the complainant.~~

~~(d) Each party shall be notified of the determination by the director, or designee, within 45 working days of the close of the hearing.~~

~~Authority: Section 14536, Public Resources Code. Reference: Sections 14585(f), Public Resources Code, and Section 11505(c), of the Government Code.~~